



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 20, 2003

Ms. Hadassah Schloss
Open Records Administrator
Texas Building and Procurement Commission
P.O. Box 13047
Austin, Texas 78701

OR2003-4260

Dear Ms. Schloss:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 183124.

The Texas Building and Procurement Commission (the "Commission") received a request for the names of the evaluation team established for Request for Proposal ("RFP") 946-A1, the Procurement Card and Corporation Travel Charge Card Programs. You assert the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. Gov't Code § 552.104. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, a government body invokes section 552.104 to except information submitted to it as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). Usually, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

In this case, you inform us that as RFP 946-A1 remains in the evaluation phase, the Commission continues to evaluate all proposals. Further, you advise us that the Commission has not awarded a contract in response to this RFP. Lastly, the Commission argues "[r]eleasing the evaluators' names could make them targets to pressure tactics for the bidding

companies.” After reviewing your arguments, we conclude you have not sufficiently shown how merely releasing the names of the evaluators would harm the Commission’s interests in this bidding process. Therefore, we conclude the Commission may not withhold the names of the evaluation team under section 552.104.

Next, we address your arguments under section 552.111 of the Government Code. This provision excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. Section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.).

In this instance, Attachment B contains a list of individuals on the evaluation team. This list is not an interagency or intraagency communication. Moreover, we find the names of the evaluation team are purely factual information. See *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Accordingly, we conclude the Commission may not withhold the submitted information based on section 552.111 of the Government Code.

In summary, the Commission has not adequately established the applicability of section 552.104 of the Government Code as a basis for withholding Attachment B. Further, Attachment B does not contain the type of information excepted by section 552.111 of the Government Code. As the Commission claims no other exception to disclosure for our consideration, it must release the names of the evaluation team to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/sdk

Ref: ID# 183124

Enc: Submitted documents

c: Ms. Melisa Atkinson
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(w/o enclosures)